

## **Minutes**

**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**  
**Regular meeting to be held in the Commissioners Meeting Room,**  
**Third Floor, Historic Courthouse,**  
**Boonville, Indiana**  
**April 26, 2021 at 6:00 P.M.**

### **PLEDGE OF ALLEGIANCE:**

**MEMBERS PRESENT:** Mike Moesner, Chairman; Jeff Willis, Terry Dayvolt, Doris Horn, Paul Keller, Jeff Valiant, & Mike Winge.

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, and Kim Kaiser, staff.

### **MEMBERS ABSENT:**

**MINUTES:** Upon a motion made by Mike Winge and seconded by Doris Horn the Minutes of the last regular meeting held March 22, 2021 were approved as circulated.

Chairman Moesner explained the Rules of Procedure.

### **SPECIAL USES:**

**SPECIAL USE:** BZA-SU-21-10

**APPLICANT:** Alvey's Signs by Kellie Wood, Business Development Specialist

**OWNER:** ALCOA Warrick LLC by Kari Fluesel, Communications Leader

**PREMISES AFFECTED:** Property located on the south side of SR 66 approximately 0 feet south of the intersection formed by SR 66 and SR 61, Lot No. 2 in Alcoa-APGI Subdivision. Anderson Twp.

**NATURE OF CASE:** Applicant requests a Special Use, SU 8, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: 29.69 square foot electronic message board to be used for Kaiser Aluminum LLC all in an "M-2" General Industrial Zoning District. (*Advertised in The Standard on April 15, 2021*)

Kellie Wood with Alvey's Signs, and Kari Fluesel with Warrick Real Estate LLC and ALCOA Warrick LLC were present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts from the adjacent property owners. She said the existing land use is Kaiser Aluminum and ALCOA Warrick, LLC. She stated the surrounding zoning and land use to the south, east, and west are all zoned "M-2" General Industrial, being part of the complex and to the north is zoned "A" Agricultural and is farm ground. She said there is some AE flood plain but not where the sign will be located. She stated they have an existing drive

onto SR 66. She said the applicant's statement is *We are updating and rebranding current sign. There was not a special use on file for the current EMC.*

Chairman Moesner asked do you have anything to add to the report.

Kellie Wood responded no.

Chairman Moesner asked are there any questions from the Board members on the proposal.

Chairman Moesner asked when was the Kaiser Aluminum deal closed.

Kellie Wood said I think it was April 1, 2021.

Chairman Moesner stated I knew it was fairly recent.

Kari Fluesel stated yes, it was April 1, 2021.

Chairman Moesner asked do you have a comment.

Kari Fluesel responded I am from Kaiser I was just....She stated sorry, my name is Kari Fluesel, I am the Communications Leader from Kaiser Aluminum. She said I am also the Project Leader for both ALCOA and Kaiser. She stated this particular sign has been non-functioning for about 19 months. She said it predates both me and two of my predecessors so the basic problem is we can't find parts to fix it. She stated you can imagine when you have  $\frac{3}{4}$  of your work force who doesn't sit at computers how those kind of things really are an important communication tools. She said we are very anxious, probably me more than anyone else, to get the sign repaired and replaced and I am very excited about it.

Terry Dayvolt asked how close is this to the highway.

Kari Fluesel replied I measured it today and it is two tenths of a mile.

After ascertaining there were no more questions from the Board or remonstrators for or against the project, Chairman Moesner called for a motion.

I, Doris Horn, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.

4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to no use of the words, “stop”, “danger”, “look”, or any other word which would confuse traffic.
8. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Mike Winge and unanimously approved.

Mrs. Barnhill stated we can have your approval ready on Wednesday and you can come in and get your permit after that.

**SPECIAL USE:** BZA-SU-20-02A

**APPLICANT:** River City Wireless, Inc. by Jessica Robling, Owner

**OWNER:** American Land Holdings of Indiana LLC by Jim McKean, Senior Manager-Land

**PREMISES AFFECTED:** Property located on the east side of Asbury Cemetery Road approximately 0 feet south of the intersection formed by Asbury Cemetery Road and Welte Road, Campbell Twp. 21-5-9 2899 *Asbury Cemetery Rd.*

**NATURE OF CASE:** Applicant requests a Special Use, SU 18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an amendment to BZA-SU-20-02 for an Improvement Location permit to be issued for a 184' tower (previously 164') and associated equipment in a .95 acre lease area in an “A” Agricultural Zoning District. (*Advertised in The Standard on April 15, 2021*)

Jeremy Elrod, with Morley, Project Engineer, Jessica Robling, with River City Wireless and Jim McKean, with American Land Holdings of Indiana, LLC were present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts. She said the existing land use is vacant currently. She stated the surrounding zoning and land use in all directions is zoned "A" Agricultural with some single-family dwellings to the north and the rest is vacant. She said there is no flood plain. She stated there is an existing drive onto Asbury Cemetery Rd. She said the applicant's statement is *The proposed use for this area includes adding 20' to an existing 160' self-supporting tower (180' total height) for the applicant's internet company. The requested special use is an amendment to the previously approved BZA-SU-20-02. The applicant is working with Warrick County to make high speed internet more accessible in rural areas of the county. This site will provide excellent service to this underserved area.* She stated everything is in order.

Chairman Moesner asked if there was anything to add to the report.

Jeremy Elrod replied no, I have some exhibits...

Attorney Doll asked do we have an owner present.

Jeremy Elrod stated I was going to say Jessica Robling, the applicant with River City Wireless, is here tonight. He said I don't think Jim McKean ...

Chairman Moesner stated Jim McKean is here.

Jeremy Elrod stated so we were able to get the owner here.

Attorney Doll responded thank you.

Jeremy Elrod stated we weren't sure if Mr. McKean was going to make it but it is great news that he is here otherwise Molly's staff report on the amended Special Use is to just raise the tower height another 20' so good with our radius from nearby homes and of course the effort to broaden or expand the wireless internet coverage from that portion of the County. He said we are here to answer any questions that you may have or anything about the project.

Jeff Willis stated on one area of my notes here it says 184' and another area is 180'. He asked is it a 180' tower with a 4' antenna or something.

Jessica Robling replied it is a 4' lightening rod.

Jeff Willis responded okay. He said he just wanted to make sure in case we approve it we knew the exact height.

Chairman Moesner asked is the tower currently being used.

Jessica Robling responded yes.

Chairman Moesner asked how many carriers do you have on it.

Jessica Robling replied it is just us. She said it is our tower and we are the only ones on it.

Chairman Moesner asked so you are not looking to add any other carriers on it or anything.

Jessica Robling stated right now the Town of Elberfeld is actually...we have a little bit of an agreement worked out with them where they are going to put in their redundantes for their water, their electronic meter service, but right now we are the only carrier on it.

Mike Winge asked but it is open for others.

Jessica Robling replied potentially yes, but we are the owner of the tower. She said I'm not saying that we wouldn't but business wise.

Mike Winge stated I thought when we put up towers they were supposed to have conditions where they could share so we don't have as many towers. He said if everybody is going to put private towers up...I'm not too crazy about that.

Doris Horn asked how many would you be able to co-locate besides Elberfeld.

Jessica Robling stated we would have to do a structure analysis, which if another carrier came in they would be responsible for paying for that. She said right now we have it built where we have four sectors and radios at the very top. She stated they would have to go below that and from there it would just depend on what type of equipment they were looking at. She said as long as the tower itself is structurally sound it would have to go to the tower manufacturers to have them assess that.

Mike Winge asked Morrie, haven't some of the other towers that have been put up where they could have extras put on them.

Attorney Doll stated it is a standard that I think is in our ordinance that we have to verify that there is excess capacity and....

Mike Winge said yes.

Attorney Doll stated before you can construct a new tower.

Mrs. Barnhill stated they have submitted a letter saying that they couldn't go on any surrounding towers that there is nothing that could accommodate them. She said number seven in our list of requirements in the ordinance when a new tower is necessary, construction should accommodate multiple users. She stated that is in the ordinance.

Jessica Robling stated again as long as the structural analysis comes back and says yes. She said that is not even up to us that is up to the tower manufacture. She stated World Tower I believe is who did this tower. She said it would be up to their engineers to say yes or no if the equipment they are wanting to put on it would be structurally sound to do that.

Chairman Moesner asked would you be using the same equipment right now only going another 20' higher or will that be different equipment.

Jessica Robling stated there is actually upgraded equipment that we are going to use that allows us to do higher speeds out in that area. She said right now the highest package is the 25 meg package. She stated this will allow us to do double that. She stated so we are going to put an upgraded piece of equipment at the very top that will allow us to get that higher speed.

Chairman Moesner asked will that also increase your range then.

Jessica Robling replied yes, it does. She stated going up 20' more actually gets us further out. She said Jeremy you actually put in for a new tower system out on Ditney Hill. She stated today he submitted all of that information, which will actually allow us to get to Ditney Hill and then into Elberfeld and past Elberfeld.

Jeremy Elrod stated I would just like to add that River City Wireless is working with Warrick County as part of the rural program project. He said as Jessica said some of these towers will eventually, hopefully talk to each other, which helps strengthen that network and get higher internet speeds to the rural folks.

Mike Winge asked where are we at on this because I thought the whole intent of this was when they are putting a tower up they are able to co-locate. He stated if we start having a bunch of separate towers...

Mrs. Barnhill stated on their previous application they said they could co-locate two to four co-locators. She said it would depend on the size of the antennas the person was wanting to put on the tower. She stated and on the design on this one it shows three dish mounts. She asked are those three on the design that was submitted with this.

Jessica Robling asked is that the new one.

Jeremy Elrod stated that is what I was going to ask is that the new one submitted.

Jessica Robling stated that is actually an old one. She said it can hold up to four at that location that it is at right now but we only need three. She stated it could go up to four at that spot but we only needed three.

Mike Winge said but you are stating that they have to be under you, which would make them whether or not they can get out. He stated my concern is we need to have more co-locates because we are starting to see towers up everywhere.

Jessica Robling replied yes.

Mike Winge stated I am getting the feeling that everyone likes to have their own towers and that has never been the intent.

Jessica Robling replied absolutely. She said I think the only other carrier out there is Watch Communications. She stated if they were to approach us and ask to, because they use 5G equipment where we are on 3.65, so if they were to approach us and want to do that as long as they paid for the engineering to make sure that it is sound to do what they are wanting to do. She said the 5G is something completely different than what we are operating on.

Mike Winge said but if it is not depending on the design that you already have then they would be forced to put up another tower, which is what it seems like we are running in to is my point. He said my personal feeling on that is that thing should be able to handle if it is going to be accepted and co-locate and the tower be built for that to begin with.

Jessica Robling replied absolutely and I understand that. She stated I just know that when we first put the tower up, once we ordered the tower, we wanted to make sure it would do the four at the top. She said they can't put theirs...they have to be 20 feet from ours. She stated when they put theirs up that is a whole different section of the tower itself. She said I don't know but I can get a hold of the tower manufacturer and get what the weight load and get more information for you guys to see.... She stated I think Molly said on there that it could do two to four co-locates. She asked is that what that one says. She said Rodney did that one and unfortunately is in Arkansas, so I am going off the basics that I know for towers.

Jeff Willis asked this isn't a new tower, you are just extending the current one.

Jessica Robling replied yes.

Jeff Valiant stated the tower was already approved, correct. He said you are just adding twenty more feet and the original tower said two to four co-locates so.....

Jessica Robling stated we aren't changing anything....

Jeff Valiant stated so you are just adding twenty feet to the height.

Jessica Robling replied yes, we are just adding the twenty feet to the height.

Mike Winge stated but the problem is you still can't co-locate it sounds like it is going to be private.

Jeff Valiant stated I don't think she said no I think she said they don't have anybody lined up to go up there. He said he knows Elberfeld is in agreement to put a thing up there.

Jessica Robling stated we haven't had anybody reach out to us.

Chairman Moesner stated I heard you say that you are adding twenty feet but they can't be within twenty feet so basically they are going to be putting equipment at the ....

Jessica Robling stated they would have to go at the 140' mark or lower because we are right now at the 160' mark and the new equipment will go at the top.

Terry Dayvolt asked and this is not a cell tower.

Jessica Robling responded no, this is wireless internet.

Jeff Valiant replied no, this is basically for an antenna for internet.

Terry Dayvolt stated so there would be no cell antennas up on this tower.

Jessica Robling replied correct.

Terry Dayvolt asked so it would have to be another internet provider to come in and want to go on your tower.

Jessica Robling responded yes, it would have to be.

Jeff Valiant stated or some type of radio communication.

Jessica Robling stated or some type of two wave radio.

Mike Winge asked didn't we have somebody already locate up there. He asked was it River Town. He said the guy that came in here a couple of months ago.

Jessica Robling stated that was probably my father-in-law, Rodney Nicholson.

Mike Winge said yes. He said so this is the one he did and we are just extending that one.

Mrs. Barnhill responded yes, and they had to amend their Special Use.

After ascertaining there were no more questions from the Board and no remonstrators for or against the project, Chairman Moesner called for a motion.

I, Terry Dayvolt, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.



3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents. The USE as developed will not adversely affect the surrounding area.
4. Adequate and appropriate facilities will be provided for proper operation of the USE.
5. The specific site is appropriate for the USE.

In addition, the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to an anti-climbing device and/or fence, be put up around tower.
8. Subject to the Commercial Utility Pull Off being completed and certified by their engineer.
9. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property. (pg. 35)

The motion was seconded by Doris Horn and passed 6-0.

Attorney Doll stated this is not a telecommunications tower. He said this is a broadcast/internet tower. He asked is it controlled by the FCC.

Jessica Robling replied no, if you stay under 200' you do not have to register with the FCC.

Attorney Doll stated all right we just made this a telecommunications tower regulated by the FCC.

Terry Dayvolt asked can we strike that.

Attorney Doll said you are subject to some type of regulations.

Jessica Robling responded absolutely.

Attorney Doll asked which agency.

Jessica Robling replied right now what we are broadcasting is 3.65 so we...they got a lot of money from us so they actually monitor our system and all of that sometime.

Attorney Doll asked which agency is they.

Jessica Robling stated it's the FCC. She said I don't...

Attorney Doll stated I'm going to make a request that we change this last paragraph. He said strike the word telecommunication and insert broadcast internet facility in place of that.

Terry Dayvolt asked instead of telecommunications.

Attorney Doll stated instead of FCC we talk about the appropriate governmental agency or the appropriate federal agency.

Terry Dayvolt asked so we are striking telecommunications.

Attorney Doll replied strike telecommunications. He said my recommendation is that we strike telecommunications and substitute broadcast internet facility. He stated and strike FCC and substitute appropriate federal agency.

Chairman Moesner asked this will be a proper amendment then, is that correct.

Attorney Doll replied if he accepts it.

Terry Dayvolt stated I will make an amendment to my motion each operator of a broadcast internet facility must send to the Area Plan Commission a copy of any notice sent to the appropriate governing body of this entity of intention to cease operations.

The amended motion was seconded by Doris Horn and passed 6-0. Jeff Valiant abstained due to Elberfeld's involvement.

Mrs. Barnhill stated we will have your approval ready on Wednesday.

**VARIANCES:**

**VARIANCE:** BZA-V-21-09

**APPLICANT:** David Parker

**OWNER:** Spurling Development, LLC by Andy Spurling, Member

**PREMISES AFFECTED:** Property located on the south side of Bell Oaks Dr. approximately 0' west of the intersection formed by Bell Oaks Drive and Merchant Drive. Ohio Twp. Lot No. 9 in Highpointe Centre Subdivision Section E No. 2 *8177 Bell Oaks Dr.*

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to all an Improvement Location Permit to be issued for a 413 square foot deck addition to an existing patio attached to the Prime Time Restaurant. The proposed addition will encroach a maximum of 3' into the side set back line, in a "C-4" General Commercial Zoning District. (*Advertised in The Standard on April 15, 2021*)

David Parker and Andy Spurling with Spurling Development were present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated the return receipts to the adjacent property owner's we have all but two. She said we have the returned letters for Express 2 Reality and Power Systems Properties LLC. She stated we do have all of the white pay receipt copies showing they were all mailed correctly. She said the existing land use is a restaurant being Primetime. She stated the surrounding zoning and land use with the zoning in all directions is "C-4" General Commercial with commercial businesses. She said there was no flood plain. She stated the existing drive is on Bell Oaks Drive and Merchant Drive. She said the applicant's statement is *unable to meet 5' property line rule, is 3'. Patio is already poured and this deck would cover it to allow for outdoor seating when raining.* She stated the application is in order.

Chairman Moesner asked if there is anything to add to the staff report.

David Parker replied no, that is it.

Chairman Moesner asked are you putting a roof over this or will it be enclosed.

David Parked stated we are putting a deck over the existing patio and there will be a drainage system underneath it that would keep the underneath dry.

Mrs. Barnhill asked is the owner here.

David Parker replied yes, Andy.

Mrs. Barnhill said yes, Andy Spurling. (Andy Spurling came to the podium)

Chairman Moesner asked what are the approximate dimensions of the... 213 square foot so what does that make it.

Mrs. Barnhill asked of the deck.

Chairman Moesner replied yes.

Mrs. Barnhill stated 11.3'.

Terry Dayvolt stated by 35.5'.

Mrs. Barnhill responded yes. She stated the closest point will be where the stairs are on the top. She said the closest point is two feet from that property line. She stated commercial setbacks are five feet so it would be a three foot relaxation.

Terry Dayvolt asked so you have already poured the patio.

David Parker replied the patio has been there since we took...

Terry Dayvolt asked so it is already encroaching into the building setback.

David Parker stated yes it is. He said as I understand it with poured concrete you can go almost up to the property line or to the property line but since it is going to be a structure it needs to be five feet. He stated if we cover the existing poured concrete it will be three feet too far.

Attorney Doll stated that patio has been there two, three, or four years.

David Parker responded it is twelve or fourteen years old.

Attorney Doll stated it was when it was Beef O' Brady's I think the patio was there.

Mrs. Barnhill stated Terry, we don't issue permits for concrete pads so they could go up to the property line with the concrete.

Terry Dayvolt said so when you obtain a Building Permit we do not include that concrete patio in the Building Permit for permit purposes.

Mrs. Barnhill stated they can show and they do show it sometimes but they don't have to because it's not a permitted structure.

Terry Dayvolt replied okay.

After ascertaining there were no other questions from the Board and no remonstrators for or against the project, Chairman Moesner called for a motion.

I, Jeff Valiant, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the existing concrete patio into the setback.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:

- a) Subject to an Improvement Location Permit being obtained.
- b) Subject to a Building Permit being obtained.
- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.

The motion was seconded by Paul Keller and passed unanimously.

Mrs. Barnhill stated we will have your approval done on Wednesday. She said you can come in then and get your permit.

David Barker asked Wednesday.

Mrs. Barnhill replied yes.

David Barker said okay, thank you.

**VARIANCE:** BZA-V-21-11

**APPLICANT & OWNER:** Westfall Investments, LLC by Carl Westfall, owner

**PREMISES AFFECTED:** Property located on the north side of Vann Road approximately 2,200' southwest of the intersection formed by Vann Road and Wethers Road, Ohio Twp. Lot No. 5 & 6 in Warrick Research and Industrial Center No. 8 – Section 2. 4888 & 4900 Vann Road.

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow Improvement Location Permits to be issued for storage buildings not meeting the 10' requirement between structures. They are asking for 1', 5', and 7' distance between buildings. All in "M-2" General Industrial Zoning District. (*Advertised in The Standard on April 15, 2021*)

Carl Westfall was present.

Chairman Moesner asked for a staff report.

Mrs. Barnhill stated we have all of the return receipts except for one green card for Benjamin Bush. She said we do have a copy of the pay receipt showing it was mailed correctly. She stated the existing land use is vacant. She said to the north and west are zoned "M-2" General Industrial Zoning District being either vacant or commercial storage buildings. She stated to the east is zoned "M-2" with a commercial warehouse business. She said to the south is "M-2" and "A" with a landscaping business and Newburgh New Day Fellowship Church of God. She stated there is no flood plain. She said they have two existing drives on Vann Road. She said the applicant's statement is *Applicant requests a variance to allow the construction of three-sided storage buildings not meeting the required separation requirement of 10 feet. Applicant is proposing a minimum separation distance of one foot, a nine feet relaxation from the regular requirements.*

She stated we do have a letter from Dennis Lockhart the Warrick County Building Inspector approving of the variance. She said everything is in order.

Chairman Moesner asked do you have anything to add to the staff report.

Carl Westfall stated I am just in phase two of the existing property to itself. He said we aren't doing any curb cuts or anything. He stated Cash Waggner put the buildings so we have time to get this, the spaces, and so forth. He said so that is why pieces on that property as possible and then we are going through phase one to get out to the existing gates and entrances and exits.

Chairman Moesner asked what are these used for, storage.

Carl Westfall stated strictly boats and RV's basically.

Jeff Willis asked is this a wood frame building or a steel frame building.

Carl Westfall replied it is a post frame with metal sides.

Chairman Moesner asked is the property gated and fenced.

Carl Westfall replied it will. He said everything will get security gated with cameras everywhere and stuff like that.

After ascertaining there were no other questions from the Board and no remonstrators for or against the project, Chairman Moesner called for a motion.

I, Mike Winge, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is its close proximity to phase one.

4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to Improvement Location Permits being obtained.
  - b) Subject to Building Permits being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.
  - e) Subject to variance from Building Commission.



The motion was seconded by Jeff Valiant and unanimously carried.

Mrs. Barnhill stated we will have your approval ready on Wednesday.

### **ATTORNEY BUSINESS:**

Attorney Doll stated Judge Grainger did not like how I prepared and we addressed the approval of SU-13 on behalf of Peabody Coal. He said he has remanded it back a second time in which he wants each of your individual opinions as to each finding of fact and each document that was submitted to be certified to the court. He stated before we do that I have reached out to Peabody to find out just how interested they really are in this site. He said I have some reason to believe they may not be that interested. He stated before we spend the time for each of you to sit down with me and to do this we need to know the answer to that. He said so I am awaiting an answer from their council now. He stated I will report back to...I told Mike and Molly about this beforehand...I will report back as soon as I know the answer to that question and if necessary we will get started. He said right now we are the only ones in this fight. He stated Peabody has not spent any time or money frankly in supporting this. He said I would really like to know what their intentions are.

Mike Winge stated Morrie I would like to bring up something here this evening. He said I have some friends that is in the mining industry and very familiar with blasting and all of the stuff that goes along with it so I have been doing some research on that. He stated the mine up there by Watson Road that we have already going up, I can't remember the name of it, but I am building not too far away from them and I voted for them, I have no problem with that, but I know they are supposed to have controlled blasting. He said I am up there and my neighbor came over, they had just built a new house and we are building one too, he already has cracks in his basement wall, which I recommended he not build a basement but here is the problem. He stated I am up there at different times, whenever I get out of the other shop, and they set off some of those charges and they are supposed to be controlled to a limited amount with space in between them. He said and some of them things that goes off are really strong. He stated I have a guy I am talking to and I have talked to one of the Commissioner's. He said I am going to see about getting an independent where we can set those seismometers up because these guys are breaking the rules. He stated I know they are.

Doris Horn stated you put that up and they will quit.

Mike Winge asked what.

Doris Horn stated they will quit once you put those up but once you take them down they are back at it again.

Mike Winge stated they aren't going to know about them because we are going to do them... He said I know how it works and I know the people with the Government and I already have her name and everything else and they said she is very.... He said she will pull their license if she catches them doing it she is that severe about it. He stated we are going to have to do something quietly and I am going to be looking at that because I know they are breaking the rules.

Attorney Doll stated I think we just violated the quietly part of this. He said I want to be clear to the Board. He said none of Mike's concerns about this other site have any bearing on the Ditney site.

Mike Winge asked but would it not Morrie if they are in violation of the rules, the operating rules. He stated that is what we give them the Variance (Special Use) for.

Attorney Doll stated the Variance (Special Use) isn't for that. He said the Variance (Special Use) is because the mine site, the permitted area is either within an urban area, which contains eight residences within a quarter square mile by definition of the Indiana General Assembly or because the mine site is within a flood plain. He said the particular application for the SU-13 that we dealt with previously fell within a flood plain in two locations. He stated very, very, very minor. He said it just touched it.

Mike Winge replied I remember that.

Attorney Doll stated that is the only reason they had to come before the BZA was because of the two flood plain issues. He stated had they carved those out, done a LOMA, or some other system they would not have even had to come in and ask for the SU-13. He said and they could have filed for it. He stated they believed filing for the SU-13 was going to be quicker than applying for a LOMA, which as it has turned out isn't true. He stated that is all I am going to say about that, it has nothing to do with blasting, we have no jurisdiction over blasting, and Warrick County has no jurisdiction over blasting that is federally regulated.

Mike Winge stated the bad part about that is come to find out that they are self-regulated and they have to turn the records into the Feds but they monitor themselves. He said I know they are violating. He stated it doesn't bother me because I put mine in so substantial it couldn't affect me so I don't care how much blasting they do. He said I am smart enough to know that they are blasting.

Attorney Doll stated here again that doesn't have anything to do with the SU-13. He said I am trying to avoid having to report further minutes of consideration of the SU-13 to the court from tonight's meeting so we are done talking about that.

Mike Winge stated we will leave it there.

Attorney Doll responded yes, thank you.

Mike Winge stated but I don't have to like it.

### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Barnhill stated she had nothing further to report.

Chairman Moesner called for a motion to adjourn.

Jeff Valiant stated I make a motion that we adjourn. Doris Horn seconded the motion and it carried unanimously. The meeting adjourned at 6:45 p.m.

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Mike Moesner, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held April 26, 2021.

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Molly Barnhill, Executive Director